

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No 352 of 2000

AND

APPEAL FROM ORDER No. 353 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.H.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

SAHERA ERACHSHA HOSHANGJI CHINIWALA

Versus

HOSHANGJI HORMASJI & SONS

Appearance in both matters::

MRS KETTY A MEHTA for Appellants.

MR PRASHANT G DESAI for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.H.MEHTA

Date of decision: 19/10/2000

COMMON ORAL JUDGEMENT

At the request of learned advocates for both the parties, when these two appeals are taken up for final hearing, both the parties have submitted jointly to dispose of these two appeals finally by giving suitable directions to the parties and the learned Judge of the

Trial Court. They also submitted that reasons be not assigned in the Judgment while disposing of these two appeals.

Having heard the learned advocates for both the parties and on going through grounds of appeal stated in appeal memo, and on taking into consideration the rival contentions of both the parties, this Court deems fit, just and proper to dispose of these two appeals, by giving suitable instructions and directions to both the parties.

(A) The defendants Nos. 2 and 3 are directed to deposit hereafter the amount of 37.5% of profit without deduction of partners salary, every year on or before 31st October in the lower Court and the plaintiffs shall be at liberty to withdraw an amount of Rs.60,000/- (Rs.Sixty thousand only) without seeking orders from the trial Court, and the remaining amount shall be invested by the lower Court in the Fixed Deposit account with any Nationalised Bank in commulative scheme in the name of Civil Judge (Senior Division),Surat at present for three years and in case of necessity, it may be renewed for further period, as may be deemed fit by the trial Court, looking to progress in the suit.

(B) The profit for the financial year 1999-2000 to the extent of 37.5% of profit without deducting salaries of the partners will be deposited in the lower court on or before 30th November, 2000 and the amount of Rs.60,000/- (Rs. Sixty thousand only) will be withdrawn by the plaintiffs and the remaining amount will be invested by the lower Court as per directions given in Para (1) hereinabove.

(C) The defendant nos. 2 and 3 shall submit audited accounts of partnership firm, every year in the lower Court on or before 30th November, pending the suit and the auditor appointed by the plaintiffs at their costs, will be at liberty to check the said accounts in the Office of the Auditor of the defendants and he shall be at liberty to check all the relevant books of account including vouchers in case of doubt by the plaintiff's auditor. The plaintiffs can move the Civil Court, Surat for discrepancy, if any, in profit.

(D) The defendant Nos. 2 and 3 shall not transfer and shall maintain status quo regarding all the assets and properties of the partnership firm within the meaning of Sec. 14 of the Indian Partnership Act, till final disposal of the suit.

(E) The plaintiff shall not further file any application before any authority by way of causing any hindrance in continuing business in the name of M/s. Hormashji Hoshangji & Sons for sale of foreign liquor and shall not initiate any further proceedings, pending the suit.

(F) That the amount of Rs.3,33,799-87 Ps. already deposited in the trial Court by the defendants Nos. 2 and 3, shall be invested by the lower Court as per directions given in Para (1) hereinabove.

(G) This order is passed as an interim measure. The trial Court is directed to decide the suit without being influenced by this order as well as the orders which are challenged in these two appeals. The trial Court shall finally dispose of the suit as early as possible, preferably within six months from the date of receipt of writ of this order, purely on merits after affording full opportunity of being heard to both the parties, in accordance with law.

2. With the above clarifications and directions, the orders passed by the trial Court below Exs.5 and 5A in Special Civil Suit No. 264 of 1999 which is pending on file of the Civil Court, Surat, are modified to the extent aforesaid and in view of this, and as per request made by the learned Advocate Ms. Ketty A. Mehta for the appellants, both these appeals are allowed to the above extent and in view of this, now she does not press and persue these two appeals any further. With the aforesaid directions, and clarifications, both these appeals stand disposed of accordingly.

Date: 19/10/2000. (H.H.MEHTA,J.)
ccshah